IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

AS.No. 882 of 1998(A)

OS.4/1994 of PRL.SUB COURT,THRISSUR
.....

APPELLANT/DEFENDANT:

JACOB, AGED 62 ;YEARS,
S/O.PARAMBILLY DEVASSY,
KANNANKULANGARA DESOM,
TRICHUR TALUK.

BY ADV. SRI.RAJIT

RESPONDENT/PLAINTIFF

JOHN, AGED 66 YEARS, S/O.PARAMBILLY DEVASSY,
13/1604, IYYAPPAN MILLS COMPOUND,
KOKKALAI, THRISSUR VILLAGE AND TALUK.

BY ADV. SRI.K.G.BALASUBRAMANIAN

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

A.S.NO.882 OF 1998

Dated this the 12th day of September, 2007

JUDGMENT

Raman, J.

Since both sides entered appearance, fresh notice is dispensed with, and this being a matter of the year 1998, we dispose of the appeal after hearing both sides. This is a suit for partition. Preliminary decree has been passed. There was a jack tree in the property which was alleged to have been cut by the appellant herein. Commissioner has valued the jack tree at Rs.23,000/- and odd. While allotting the share the court below has directed the appellant to pay an amount of Rs.10,000/- towards the share of the plaintiff (respondent herein).

According to the appellant, the jack tree was cut in the year 1993 and the Commissioner has conducted an inspection in March, 1993 and thereafter at the time when the order was passed, the tree was completely decayed, which fact, according to him, could not be brought to the notice of the court below at the time of passing the order. The learned counsel for the respondent however would submit that admittedly the jack tree was inspected by the Commissioner and

the same has been valued properly. If the appellant has a case that at the time of passing the order by the court below the tree was completely decayed, nothing prevented the appellant from requesting the court below for examination of this aspect by the Commissioner. However, we find that only a preliminary decree is passed and if the appellant has got sufficient evidence to show that he was not able to remove the jack tree and that he could not put it to use, it is up to him to establish that fact. Therefore, an opportunity be given to the appellant. The court below will consider this aspect of the matter at the time of passing the final decree.

The appeal is dismissed subject to the above observation.

P.R.RAMAN,
Judge.

V.K.MOHANAN,
Judge.

kcv.

P.R.RAMAN, J.

A.S.NO.882 OF 1998

JUDGMENT

12th September, 2007